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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of Section 255 of the)
Telecommunications Act of 1996)

WT Docket No. 96-198

Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons With Disabilities)

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REPLY COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION

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**REPLY COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") hereby replies to the comments filed in response to the above-captioned *Notice of Inquiry* regarding the implementation of Section 255 of the Telecommunications Act of 1996.¹ The record in this proceeding indicates that the Commission, service providers, manufacturers, and consumer groups should work together to develop flexible guidelines, not rigid rules, for accessible telecommunications. Such guidelines will best promote access to telecommunications equipment, customer premises equipment ("CPE"), and services by all Americans, regardless of their disabilities, whenever technically and economically feasible.

¹ *Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons With Disabilities*, FCC 96-382, WT Docket No. 96-198 (rel. Sept. 19, 1996) ("*NOI*" or "*Notice of Inquiry*").

I. INTRODUCTION AND SUMMARY

In this proceeding, many parties joined PCIA in supporting the Commission's goal of "providing for greater access and availability of telecommunications to Americans with disabilities,"² when such access is "readily achievable." A substantial number of commenters also agreed with PCIA's opposition to any attempt by the Commission to promulgate a detailed series of command and control regulations designed to promote accessibility. Rather, PCIA and many others suggested that the Commission devise processes whereby all affected entities -- including manufacturers, service providers, and advocacy groups for the disabled -- could reach consensus on which types of equipment and services need to be made accessible and how best to do so. The record reflects that such a consensus-based approach takes advantage of the numerous industry-consumer accessibility initiatives that are already under way, will result in a greater variety of accessible services that are better tailored to meet the individualized needs of Americans with disabilities, and recognizes that in a dynamic industry such as telecommunications, command and control regulations are prone to obsolescence.

Specifically, PCIA made the following points in its opening comments, for which there was ample support from other parties. First, because of the dynamic nature of the telecommunications industry, many commenters agreed that the phrase "readily achievable" should be interpreted in a flexible manner. Such an accommodating definition of "readily achievable" will result in the development of industry guidelines, rather than rigid

² NOI, ¶ 1.

requirements. These flexible guidelines should prevent the imposition of unyielding accessibility solutions that are likely to be overtaken by changing technology, and therefore apt to become outdated. Further, the Commission should follow the lead of the Americans with Disabilities Act and make cost a factor in determining whether a particular service or equipment modification is "readily achievable."

In addition, while products and services should be accessible to people with as many types of disabilities as is technically and economically feasible, it is unrealistic to expect that every product and service can be made accessible to every American. Therefore, the record reflects that the Commission should concentrate on ensuring that products or services are available in the market that suit the varying communications needs of each American with disabilities. Finally, given the fact that accessibility solutions often arise after a product has come to market, new products should not be kept from the market solely because they are inaccessible in their initial rollout configuration.

When developing equipment and CPE guidelines, many parties agreed with PCIA that it is vitally important for the Commission to encourage cooperation among equipment manufacturers and service providers and cooperation between the telecommunications industry and consumer groups. Such an intermingling of expertise will give the industry insight into the communications needs of consumers with disabilities and the types of products required to meet these needs, and it will give those with disabilities insight into what products are already accessible and what technical and economic barriers stand between other products and full accessibility.

The process by which complaints of incompatibilities between digital wireless telephone service and hearing aids are being resolved is illustrative of the aforementioned cooperative approach to problem solving. As a result of a series of industry-initiated meetings between equipment manufacturers, standards organizations, and consumer groups, industry representatives recently submitted to the Commission a report outlining possible solutions to the problem of hearing aid compatibility.

Finally, PCIA and many others urged the Commission to allow industry members to make good faith efforts at resolving consumer complaints prior to taking formal action. Such a policy will not only lead to the more rapid resolution of complaints, but it will also save significant Commission, consumer, and industry resources. Along these lines, in order to provide diligent industry members with a "safe harbor," a number of parties suggested that the FCC should make compliance with the Commission's accessibility guidelines a defense to consumer complaints.

II. MOST COMMENTERS AGREED THAT "READILY ACHIEVABLE" SHOULD BE DEFINED THROUGH FLEXIBLE GUIDELINES THAT PROMOTE A ROBUST SELECTION OF COMMUNICATIONS PRODUCTS AND SERVICES AND ACCOUNT FOR BOTH TECHNOLOGICAL AND ECONOMIC FACTORS

Representatives of all of the groups participating in this proceeding -- manufacturers, disability advocacy organizations, and service providers -- supported defining "readily achievable" in a manner that ensures the greatest possible accessibility to telecommunications services and CPE by persons with disabilities, consistent with economic and technological realities. For example, Motorola, Inc. ("Motorola"), an equipment manufacturer, stated that

in crafting a definition of "readily achievable," the FCC should encourage manufacturers to maximize the resources dedicated to accessible product design and development and promote the incorporation of accessibility considerations into manufacturers' design processes.³ The National Association of the Deaf ("NAD") added that equipment and services should be accessible to the greatest possible number of Americans with disabilities as is "readily achievable."⁴ On the carrier side, the Pacific Telesis Group ("Pacific Telesis") strongly supported Congress' and the FCC's goal of ensuring that all Americans are able to benefit from advanced telecommunications services.⁵

To this end, several commenters explained that the combination of accessibility guidelines and market forces will permit service providers and manufacturers to deliver innovative accessibility solutions. Microsoft Corporation ("Microsoft") typified this deregulatory philosophy by stating that product differentiation in a competitive marketplace should be encouraged so that the market -- not regulation -- will provide for the needs of individuals with a variety of disabilities.⁶ Similarly, Pacific Telesis has implemented process-oriented "Universal Design" policies into its product design, development, and

³ See Comments of Motorola, Inc., WT Docket No. 96-198, at 14-19 (filed Oct. 28, 1996) ("Motorola Comments").

⁴ See Comments of the National Association of the Deaf, WT Docket No. 96-198, at 20 (filed Oct. 28, 1996) ("NAD Comments").

⁵ See Comments of Pacific Telesis Group, WT Docket No. 96-198, at 3-4 (filed Oct. 28, 1996) ("Pacific Telesis Comments").

⁶ See Comments of Microsoft Corporation, WT Docket No. 96-198, at 28-30 (filed Oct. 28, 1996) ("Microsoft Comments").

implementation strategies.⁷ Such a program demonstrates that the telecommunications industry is willing to produce accessible products without government mandates. Indeed, it is in the economic interest of equipment manufacturers to increase product accessibility because such accessibility increases the customer base for their products.⁸

There is also widespread agreement with PCIA's suggestion that given the dynamic nature of the communications industry, mandating rigid rules to promote accessibility is both impractical and counterproductive. Ericsson Inc. ("Ericsson") noted that the adoption of static technical rules or standards may delay the deployment of accessible and compatible equipment,⁹ while Northern Telecom Inc. ("Northern Telecom") stated that guidelines should provide flexibility in achieving the goals of Section 255.¹⁰ The Telecommunications Industry Association ("TIA") concluded that because fixed rules pose a risk of "freezing" adaptive technologies, they would work to the disadvantage of those with disabilities.¹¹ Thus, any guidelines ultimately established should reflect implementation dates and

⁷ See Pacific Telesis Comments at 5-7.

⁸ See Comments of the Consumer Electronics Manufacturers Association, WT Docket No. 96-198, at 14 (filed Oct. 28, 1996) ("CEMA Comments").

⁹ See Comments of Ericsson Inc., WT Docket No. 96-198, at 11 (filed Oct. 28, 1996) ("Ericsson Comments").

¹⁰ See Comments of Northern Telecom Inc., WT Docket No. 96-198, at 5-6, 10 (filed Oct. 28, 1996) ("Northern Telecom Comments").

¹¹ See Comments of the Telecommunications Industry Assoc., WT Docket No. 96-198, at 2-4 (filed Oct. 28, 1996) ("TIA Comments"). See also Comments of the Information Technology Industry Council, WT Docket No. 96-98, at 11 (filed Oct. 28, 1996); Pacific Telesis Comments at 23-24; Comments of Ultratec, Inc., WT Docket No. 96-198, at 1-2 (filed Oct. 28, 1996).

methodologies that take into account the rapidly changing economic and technical realities that characterize the telecommunications industry.

Many commenters further joined PCIA in urging the Commission not to require that every product or service be made accessible to people with every type of disability. Rather, they asked the Commission to evaluate accessibility by asking whether a consumer could find a combination of accessible products and services in all relevant telecommunications market segments. As stated by Omnipoint Corporation, no single manufacturer or service provider should be responsible for ensuring that every device or service is usable by all classes of individuals with disabilities, but the industry as a whole should be examined to determine whether manufacturers and service providers are meeting the needs of the disabled.¹²

Finally, the record reflected broad agreement with PCIA's concern that consistent with the Americans With Disabilities Act, any definition of "readily achievable" must incorporate an examination of economic feasibility.¹³

¹² Comments of Omnipoint Corporation, WT Docket No. 96-198, at 8-9 (filed Oct. 28, 1996) ("Omnipoint Comments"). *See also* Comments of AT&T Corp., WT Docket No. 96-198, at 10-11 (filed Oct. 28, 1996) ("AT&T Comments"); Ericsson Comments at 7-8; Comments of Inclusive Technologies, WT Docket No. 96-198, at 2 (filed Oct. 28, 1996) ("Inclusive Technologies Comments"); Comments of Massachusetts Assistive Technology Partnership, WT Docket No. 96-198, at 4 (filed Oct. 28, 1996) ("MATP Comments"); Comments of MCI Telecommunications Corporation, WT Docket No. 96-198, at 4 (filed Oct. 28, 1996) ("MCI Comments"); Motorola Comments at 19-21; TIA Comments at 7; Comments of Michael A. Winters, WT Docket No. 96-198, at 2 (filed Nov. 4, 1996).

¹³ *See* Comments of Consumer Action Network, WT Docket No. 96-198, at 8-9 (filed Oct. 25, 1996); CEMA Comments at 10-11; Inclusive Technologies Comments at 5; Comments of Lucent Technologies, WT Docket No. 96-198, at 16-18 (filed Oct. 28, 1996); Comments of Sprint Corporation, WT Docket No. 96-198, at 6-8 (filed Oct. 28, 1996); TIA Comments at 6.

III. THE RECORD EMPHASIZES THE IMPORTANCE OF DEVELOPING ACCESSIBILITY GUIDELINES IN CONJUNCTION WITH TELECOMMUNICATIONS SERVICE PROVIDERS, EQUIPMENT MANUFACTURERS, AND CONSUMER GROUPS

Telecommunications service providers and equipment manufacturers generally agreed with PCIA that, where feasible, addressing accessibility issues at the product design and development stage is the most efficient and effective means of improving accessibility. Speaking for equipment manufacturers, Siemens Business Communications Systems, Inc. ("Siemens") urged the FCC to encourage early, effective inclusion of access considerations in the design process with pre-market verification of these considerations,¹⁴ while Motorola requested that the Commission encourage incorporation of accessibility considerations into manufacturers' design processes.¹⁵ Similarly, Pacific Telesis, a service provider, pointed out that its past experience with telecommunications access issues highlights the importance of process-oriented compliance methods, and that at the design stage, products can be more easily evaluated for compliance with Section 255 goals.¹⁶

In addition, there is widespread support in the record for PCIA's proposal to develop a cooperative process whereby service providers, equipment manufacturers, and consumer advocacy groups are involved in developing accessibility guidelines in conjunction with the FCC. Disability advocacy groups such as the National Association of the Deaf favored a

¹⁴ Comments of Siemens Business Communications Systems, Inc., WT Docket No. 96-198, at 6-9 (filed Oct. 28, 1996).

¹⁵ Motorola Comments at 18. *See also* Northern Telecom Comments at 6-7, 10.

¹⁶ Pacific Telesis Comments at 7-8. *See also* AT&T Comments at 11-12; Comments of BellSouth Corp., WT Docket No. 96-198, at 4 (filed Oct. 28, 1996) (favoring a process-oriented approach to compliance).

process-oriented approach under which manufacturers would consult with persons with disabilities at each critical design step in order to produce accessible equipment.¹⁷

Similarly, the Massachusetts Assistive Technology Partnership called for a coordination point such as an engineering society to bring together industry and disability representatives in order to develop consensus standards.¹⁸ In addition, service providers such as AT&T and manufacturers such as Northern Telecom requested that the FCC affirmatively encourage consultations between service providers and equipment manufacturers in order to meet the goals of Section 255.¹⁹ Furthermore, all parties recognize the need to keep any such processes "bureaucracy" free in order to maximize effective participation and minimize costs.

IV. MANY COMMENTERS FAVORED INVOLVING EQUIPMENT MANUFACTURERS AND TELECOMMUNICATIONS SERVICE PROVIDERS, IN CONJUNCTION WITH THE COMMISSION, IN ADDRESSING CONSUMER COMPLAINTS UNDER SECTION 255, AND MAKING COMPLIANCE WITH INDUSTRY GUIDELINES A DEFENSE TO SUCH COMPLAINTS

A number of commenters also joined PCIA in supporting the use of industry resources to address consumer complaints prior to formal Commission action. These commenters demonstrated that such an approach would enhance consumer input regarding accessibility issues, promote the rapid disposition of complaints, and efficiently use valuable FCC resources. Preliminarily, Lucent Technologies noted that by directing complaints

¹⁷ NAD Comments at 10-13.

¹⁸ MATP Comments at 6-7. *See also* Comments of the American Foundation for the Blind, WT Docket No. 96-198, at 16 (filed Oct. 28, 1996).

¹⁹ AT&T Comments at 11-12; Northern Telecom Comments at 9, 12.

initially to the manufacturer or service provider, the need for Commission action might be eliminated.²⁰ In addition, TIA suggested that grievances should first be raised with manufacturers or suppliers, and complaints should be filed with the Commission only as a last resort after such private negotiations have failed.²¹

Finally, many parties agreed with PCIA that compliance with industry guidelines should be a legitimate defense to consumer complaints brought under Section 255. For example, Dana Mulvany, an individual with a hearing disability, stated that the FCC should allow a "good faith" defense to charges of inferior accessibility where a company can demonstrate early and ongoing reasonable efforts to address accessibility issues.²² Pacific Telesis added that the FCC could establish a rebuttable presumption of compliance for good faith efforts as demonstrated by an entity producing a Declaration of Conformity and a Consumer Accessibility Impact Report when introducing a new product or service.²³ In a similar vein, Microsoft suggested that companies using technologies listed in a national database of accessible technologies (the Accessibility Technology Clearinghouse) should be presumed to have complied with Section 255.²⁴

²⁰ Lucent Technologies Comments at 4-7.

²¹ TIA Comments at 9-10. *See also* Northern Telecom Comments at 11.

²² Comments of Dana Mulvany, WT Docket No. 96-198, at 6 (filed Oct. 28, 1996).

²³ Pacific Telesis Comments at 28-29.

²⁴ Microsoft Comments at 32-33.

V. CONCLUSION

The comments in this proceeding demonstrate that the Commission should follow three basic principles in ensuring access by Americans with disabilities to telecommunications equipment, CPE, and services. First, "readily achievable" should be defined through flexible guidelines that promote a robust selection of communications products and services and account for both technological and economic factors. Second, accessibility guidelines should be developed in conjunction with telecommunications service providers, equipment manufacturers, and consumer groups. Third, the Commission should involve equipment manufacturers and telecommunications service providers, in conjunction with the FCC, in addressing consumer complaints under Section 255 and make compliance with industry guidelines a defense to such complaints.

Respectfully submitted,

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